

1953

# Lawrence Morris v. The Farnsworth Motel et al : Brief of Appellant

Utah Supreme Court

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**IN THE SUPREME COURT**  
**of the**  
**STATE OF UTAH**

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LAWRENCE MORRIS,

*Appellant,*

vs.

THE FARNSWORTH MOTEL,  
AND DEWEY F. FARNSWORTH,  
FRANK M. FARNSWORTH, and J.  
L. CARDON, d.b.a. THE FARNS-  
WORTH MOTEL,

*Respondents.*

Case No. 7947

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**APPELLANT'S BRIEF**

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PRELIMINARY STATEMENT

Appellant was injured when he struck his foot against a chair so placed by motel employees as to partially obstruct the passageway between the sleeping room and the bathroom of the motel unit occupied by plaintiff. The chair was placed in this position in the late afternoon, after the plaintiff had engaged the motel unit and had entered it and become familiar with its arrangement, and had left for the evening.

This case comes before the court as an appeal from

an Order and Judgment of the district court granting the defendants' motion for summary judgment.

## STATEMENT OF FACTS

Since there was no trial of the case on its merits, the only factual basis upon which this case rests is to be found in the pleadings and in the affidavits of the defendants on file herein, and as in the case of a directed verdict, must be construed most favorably to the appellant.

The defendants, as revealed by the complaint and by their affidavits, are co-partners operating a motel in El Paso, Texas.

The plaintiff arrived in El Paso on May 30, 1952, late in the afternoon, somewhere between 4:40 and 6:00 o'clock, and rented one of the motel units. He took possession of the unit to the extent of inspecting it and familiarizing himself with it. Thereafter, in his absence from the motel, the furniture of the motel unit was rearranged by motel employees. In doing so, a chair was placed in a position where the front of it partially obstructed the passageway from the sleeping room to the bathroom and in such a position as to be in the shadow of other furniture in the room. Plaintiff's wife returned to the motel and retired early, but plaintiff did not return to the motel until about 10:30 or 11:00, after his wife had retired and was asleep. The room was partially illuminated by lights from outside the motel and plaintiff disrobed in the semi-illuminated room rather than turn on the lights and awaken his

wife, and he then made his way toward the bathroom, at which time, he struck his foot against the chair which had been left so as to partially obstruct the passageway. As a result of striking the chair plaintiff broke the small toe on his left foot. (R.1, 2).

Plaintiff's allegation in his complaint, is:

“That on May 30, 1952, the plaintiff rented one of the apartments in the said motel from the said partnership; that after plaintiff had rented said apartment and had entered into the same and become acquainted with the plan of the said apartment and the location of the furniture therein, and during plaintiff's absence from the apartment, one of the said partners or an employee of the said partnership, entered the apartment in the course of preparing the same for occupancy, and wilfully or recklessly or negligently placed and left a chair in the passageway leading to the bathroom doorway; that thereafter about 10:30 p.m. of said day, and after the said partner or employee had left the apartment, and after plaintiff's wife had retired, and while the apartment was generally illuminated through its windows by the light of the motel, and while the said passageway was in the shadow, the plaintiff attempted to go into said bathroom, and, while doing so, and without seeing the chair because of said shadow, ran into the said chair, breaking and dislocating the little toe on his left foot; . . .”

Dewey Farnsworth, one of the partners acknowledged in his affidavit that it was he who re-arranged the furniture in the cabin and that the chair was placed by him in a position partially blocking the door to the

bathroom, sometime late in the afternoon. That he and plaintiff sat in the motel office apartment until about midnight before plaintiff went to his cabin. (R. 7, 8). His affidavit also reveals that there is a neon light which runs around most of the motel.

The affidavit of J. L. Cardon reveals that there is sufficient light from the outside to see around in the rooms of the motel. (R. 9, 10).

## STATEMENT OF POINTS

1. THE TRIAL COURT ERRED IN RULING AS A MATTER OF LAW THAT THE DEFENDANTS WERE ENTITLED TO A SUMMARY JUDGMENT AND IN GRANTING DEFENDANTS A JUDGMENT ON THE MERITS DISMISSING PLAINTIFF'S COMPLAINT.

## ARGUMENT

a. DEFENDANTS, AS MOTEL KEEPERS, HAD A DUTY OF SEARCHING OUT HIDDEN DEFECTS AND PLAINTIFF WAS ENTITLED TO RELY ON THIS DUTY AND THE PERFORMANCE OF THIS DUTY BY THE DEFENDANTS.

Motel keepers, on an equal footing with hotel keepers and others providing similar facilities, owe a duty of due care to their guests. Reasonable care, commensurate with the nature of the business in which they are engaged, dictates that paying guests are entitled to be free from hazards placed and created by the motel keepers. The plaintiff, in renting the motel unit assigned to him by the defendants was, of course, a business visitor, and as such, was entitled to all of the care and caution required of the possessor of land with relation to business visitors. Because the possessor of land is required to take reasonable care to ascertain

the actual condition of the premises and make them reasonably safe or give warning of dangerous conditions, and because the business visitor is entitled to expect such care and caution:

“Therefore, a business visitor is not required to be on the alert to discover defects which if he were a bare licensee, entitled to expect nothing but notice of known defects, he might be negligent in not discovering.” (Restatement of the Law of Torts, Sec. 343, Comment (d).)

This principle is enunciated in *Shattuck v. St. Francis Hotel*, 7 Cal. 2d 358, 60 P. 2d 855, wherein it is said:

“The fact that the plaintiff visited the room and inspected the furnishings does not, in our judgment, change the rule of responsibility. She had the right to assume that the landlord knew, and had means of knowing, that everything required for the ordinary use and occupancy was free from any fault consistent with the proper use and enjoyment of the room.”

Thus, the defendants in this case were duty bound to discover dangerous conditions existing in the rooms of their motel and either rectify the same or warn the occupants adequately in order to protect them from harm. In *Carpenter vs. Syret*, 99 Utah 208, 104 P. 2d 617, the court stated the rule to be:

“It is the duty of a hotel keeper to maintain his building and premises in a condition reasonably safe for its guests.”

To the same effect is 43 C.J.S. 1076, Inkeepers, Sec. 22.



The same principle has been applied under many factual situations involving facilities and fixtures of hotels, among which are the following: In *Adams vs. Dow Hotel Co.*, 25 Cal. App. 2d 51, 76 P. 2d 210, where a porcelain faucet in the bathroom broke causing injuries; in *Topley vs. Zeeman*, 216, Cal. 182, 13 P. 2d 666, where a bathtub, supported by three legs and some blocks of wood in place of a fourth, gave way injuring plaintiff; and in *Robertson vs. Weigert*, 136 Okl. 145, 276 P. 741, where a catch on the hand railing failed to work properly and plaintiff fell through the railing.

b. THE DEFENDANTS IN THE EXERCISE OF REASONABLE CARE SHOULD HAVE FORSEEN THE LIKELIHOOD OF INJURY TO A PATRON BY A CHAIR PLACED SO AS TO PARTIALLY BLOCK AND OBSTRUCT THE PASSAGEWAY BETWEEN THE TWO ROOMS.

The question which comes sharply into focus, is whether or not the defendants in the exercise of due care under the circumstances should have considered the likelihood of injury to their paying guests arising from an obstruction so placed as to constitute a partial barrier to free access of the passageway between sleeping room and bathroom. Common sense dictates that they must regard an obstruction so placed as to be partially in the shadows to be a potential source of danger to their patrons. The bathroom was an adjunct of the sleeping room and was so intended and in fact a portion of the revenue which motels produce undoubtedly has its foundation in the fact that the motel rooms are equipped with such facilities.

The defendants, therefore, knowing that the bath-

room facilities would be used with the sleeping room and intending that the facilities be so used, took it upon themselves to re-arrange the furniture in the room while the plaintiff was away from the room and after he had familiarized himself with it, and placed the offending chair in such a position that the front of it, while in the shadows, partially blocked the passageway to the bathroom.

True, so commonplace a thing as a chair would not ordinarily seem to be an object which would be considered dangerous. Yet, however, placed so as to obstruct a passageway which defendants knew would be used at all hours of the day and night, it became fully as dangerous as if there had been a loose board or other similar object to impede safe passage between the two rooms.

The defendants in the exercise of ordinary care toward a business visitor should have realized that changing the location of a chair late in the afternoon so that it obstructed the bathroom passageway would be potentially dangerous to persons seeking to pass by it during the night time hours. It must have been obvious to the defendants that their patrons would not normally turn on all of the lights in the motel at a late hour when retiring separately or in moving about the motel during the night if occasion arose, and that consequently the chair so placed was a hazard and defendants were negligent in leaving it in that location.

In the case of *Baker vs. Decker*, (Utah) 212 P. 2d 679, a tenant of an apartment house was injured when

she tripped over a bunched up portion of a drop cloth which, along with a work table, projected out into the passageway through which the plaintiff walked. Plaintiff as she approached the canvas noticed it, and stepped on it with her left foot. In attempting to progress with her right foot, she either misjudged the height of the canvas or caught her right foot in the fold or ruffle, tripped and fell to the floor. The court held that there was thus created a question of fact for the jury as to whether defendant was guilty of negligence in not barricading the place where the equipment was located.

In the case *Ft. Dodge Hotel Co. vs. Bartlet*, 119 F. 2d 253, the plaintiff and her husband went to a hotel which they previously visited, and were shown a room. After inspecting the room they, under the guidance of the bell boy started down the hall to inspect a second room. The bell boy left the luggage in the hall near the wall, and as plaintiff turned to follow the bell boy and her husband down the hall she tripped over the luggage. The court on appeal said:

“Taking into consideration all of the facts and circumstances in the aspect most favorable to the plaintiff, the jury might reasonably have believed that an innkeeper, in the exercise of due care, would not have left the baggage of a large woman wearing glasses, and carrying a purse and a hat box, in a not too well lighted hallway, where it would be underfoot if she followed the shortest path between the room she had just looked at and another room which she had been invited to inspect.”

A case closely allied to the factual picture of the

present case is that of *Lombardi vs. Woolworth Company*, 303 Mass. 417, 22 N.E. 2d 28. In this case a radiator projected into the aisle of a store some eight inches. Just beyond it was a scale the platform of which extended sixteen inches beyond the radiator. The aisle was eight feet nine inches wide. Plaintiff struck her foot against the platform of the weighing scale and fell. The court held that the question of negligence under such circumstances was one for the jury.

In the case at bar, the innkeeper similarly had a duty to provide safe premises for his paying guests. It is evident that a chair left in a passageway is an obstruction which creates a hazard. Even if the room was well lighted, so that ability to see was not a factor, the position of the chair, projecting out into the passageway so as to appreciably narrow it, would be considered by people as a hazard to be eliminated. This would be so, even though the chair or other obstacle was placed in an open space, if the position of the obstacle was such as to interfere with the normal traffic pattern of people passing through the room.

In the case at bar, the owner had the room constructed with a doorway of normal width, so as to allow free passage back and forth between the bedroom and bathroom. This was not because it wouldn't have been possible to have gotten along with a passageway half the width, for doubtless people could squeeze through without too much difficulty, but the full width of doorway was left to allow free and easy passage. If that doorway was blocked so as to narrow the passageway

by one-half, few people would go through the doorway without taking time to push the chair back out of the passageway. That would be the normal thing to do. This is true, not because it wouldn't be possible to squeeze through the other half of the doorway space, but because people do not normally surround themselves with hazards, especially when with slight effort they can be eliminated.

In the instant case, the defendants in the exercise of that degree of care imposed upon them for the protection of their paying guests must be held to anticipate and foresee that they had created a hazard and were negligent in so doing.

Certainly there is ample evidence of negligence on the part of defendants to justify this case having been submitted to a jury and left to the trier of facts to make a factual determination, rather than to be ruled upon as a question of law as did the trial court in this instance, and accordingly the trial court erred in ruling as he did.

**c. PLAINTIFF'S NEGLIGENCE OR LACK THEREOF WAS A QUESTION FOR THE TRIER OF THE FACTS AND NOT A QUESTION FOR DETERMINATION BY THE COURT AS A MATTER OF LAW.**

As indicated under argument a., a business visitor is not required to be on the alert to discover defects to the same extent as would be a bare licensee. He is entitled to assume that the possessor of the property has undertaken reasonable care for his safety commensurate with his position. Restatement of Torts, Sec. 343, Comment (d).

The plaintiff in this case, had examined the room in the afternoon, and was familiar with its arrangement, and was entitled to rely on the condition of the premises as he then knew them. This was not the situation of a person groping blindly about the room, where every object constitutes a hazard, but a situation wherein there was adequate illumination from the outside to allow the plaintiff to proceed to prepare to retire without the need of disturbing his wife who had retired early. The light was sufficient to allow him to move about safely in relation to the knowledge he had of the room from his examination of it. He had no duty to search for dangers himself, and had the right to rely on the fact that defendants were required to search out such dangers and to notify him of them or to correct them. People do not customarily disturb the slumbers of others at a late hour by turning on lights where sufficient light to allow movement is available from another source, and the standard of care of a reasonable person would dictate no such added precaution under normal circumstances. Plaintiff had no reason to anticipate that defendants would obstruct a doorway, and consequently did not have the duty to flood the room with light in anticipation of such an obstruction.

In *Baker vs. Decker*, Utah, 212 P. 2d 679, this court on appeal concluded that it was not negligence in law for an elderly woman to proceed across an area of hallway covered by a rumpled drop cloth, and that this was a question for the jury. Certainly, in the present



case, where plaintiff was less apprized of the danger than in *Baker vs. Decker*, the issue of contributory negligence is one which should have been submitted to the jury.

The summary judgment procedure is a remedy to be used with circumspection, and where, as here, a factual picture appears, based upon which the jury could reasonably find defendants guilty of negligence and plaintiff free from contributory negligence, it was error on the part of the Court to foreclose the plaintiff the opportunity of fully developing the factual picture for the triers of the facts.

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## CONCLUSION

In view of the fact that a jury could reasonably find that defendants were negligent in leaving a chair in such a position where it obstructed free movement and access between rooms, which defendants in the exercise of reasonable care should have realized constituted a hazard to occupants of the motel, and the fact that defendants failed to discover and warn plaintiff of this obscured defect and dangerous condition, and because the jury could reasonably find the plaintiff free from contributory negligence, it is respectfully

submitted and urged that the trial court erred in ruling as a matter of law that defendants were not negligent and in granting defendants a summary judgment, and that the trial court's ruling should be reversed and the case remanded for trial.

Respectfully submitted,

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